S.B.Civil Writ Petition No.4780/2002

Pradeep Sales Agencies
vs

State of Rajasthan & Anr.

S.B.Civil Writ Petition No.4240/2002

Sohan Lal & Anr.
vs

State of Rajasthan & Anr.

DATE OF ORDER : - 14.12.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. Vikas Balia,for the petitioner.
Mr. L.R.Upadhayay, Dy.Govt.Advocate, for the respondents.

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Heard learned counsel for the parties.

These two writ petitions have been filed by the owners of the goods, which were carried in a vehicle of a transporter on the ground that the respondent department has wrongly detained the goods. Substantially, the contention of the petitioner in the two writ petitions are that firstly there is no provision for detaining the goods under any provision of law in case the driver fails to stop the vehicle on the request of the officer of the department. In that situation, as per Section 78(10A), the vehicle can be detained, but that is required to be released on furnishing security for any amount of penalty by the owner

of the vehicle or carrier, which may be imposed and that penalty can be equal to 50% of the value of the goods carried in the vehicle.

According to learned counsel for the petitioners, this court in the interim order dated 9th Dec., 2002 passed the order to release the goods on furnishing solvent guarantee for 50% of the value of the goods in writ petition no.4780/2002. Before that in the writ petition no.4240/2002, the vehicle involved was ordered to be released by the order of this court dated 1st Nov.,2002 on furnishing two solvent securities to the satisfaction of the respondent no.2. It is not disputed that the petitioners furnished the securities and guarantees as ordered by the court in interim order and the vehicle as well as goods have been released to the petitioners of both the writ petitions.

Learned counsel for the petitioner submits that in view of the above subsequent development, the department is free to proceed with the assessment of tax or penalty whatever that may be and which can be imposed against the persons, who are liable for that tax, interest and penalty in accordance with law.

In view of the above, since the petitioners sought relief of release of goods, vehicle and quashing of the order of detention of goods as well as the vehicle, therefore, nothing survives in this matter in view of the

interim order passed by this court and the department will be free to proceed with the determination of the liability of the persons, who were involved in this transaction.

In view of the above, both the writ petitions are allowed and the order of detention of the goods and the vehicle are set aside, however, it is subject to remaining guarantee and the security furnished by the petitioners before the department in pursuance of the interim order so that in case it is held that the petitioners are liable for any amount, that can be recovered from the guarantor and surety. The writ petitions are allowed accordingly.

(Prakash Tatia), J.

c.p.goyal/-